

and Assignment of his Neighbours, sworn and tried for the same Intent, or else he shall grant to take nothing from henceforth in the same Wood, Turfland, and such other, but as his Partners will take.

(3) And if he do choose to take his Part in a Place certain, the Part wasted shall be assigned for his Part, as it was before he committed the Waste. (4) And there is such a Writ in this case, that is to say. *Cum A & B tenent boscum pro indiviso, B fecit vastum, &c.*

*em vicinorum ad hoc electorum & juratorum vel quod concedat quod nichil capiet decetero in hujusmodi bosco turbaria & aliis nisi secundum quod participes sui capere voluerint. Et si eligat capere partem suam in certo loco assignetur ei in sua parte locus vastatus secundum quod fuit antequam vastum fecit. Breve in hoc casu: Cum A. & B. teneant boscum pro indiviso B. fecit vastum, &c.*

21 Ed. 3, f. 29. Fitz. Waste, 25, 96. 2 Inst. 403. Co. Litt. 200. Regist. 76.

This Statute is expounded by the word *teneant*, translated *do hold*, to imply a freehold at least, and so on a lease to one for life and another for years, they are not within the Statute. And it includes joint-tenants, but not co-parceners, for the latter were compellable to make partition, and therefore are not within the purview of the Act. And, on the like principle, it does not extend to houses, for one joint-tenant or tenant in common might have the writ *de reparatione facienda* for repair of them, 2 Inst. 403, see 4 Kent Comm. 370.

In a case in Moor, 71, pl. 194, cited in Comyn Dig. Waste C. 2, it was ruled by two Judges, that if there be two tenants in common of a wood and one of them lease his part to the other, who cuts trees *and does waste*, he shall be punished for a moiety of the waste and the lessor shall recover a moiety of the place wasted; and in *Waterman v. Soper*, 1 Ld. Raym, 737, Lord Holt ruled, 1st, that if A. plants a tree upon the extremest limits of his land, and the tree growing extends its root into the land of B. next adjoining, A. and B. are tenants in common of the tree; but if all the root grows into the land of A. though the boughs overshadow the land of B. yet the branches follow the root, and the property of the whole is in A.: and 2d, that if there be two tenants in common of a tree, and one cut the whole tree, though the other cannot have an action for the tree, yet he may have an action for the special damages in this cutting, as where one tenant in common destroys the whole flight of pigeons. These cases were relied on in *Martyn v. Knowllys*, 8 T. R. 145, where one tenant in common occupied the \*whole land, having a demise of his moiety from the 125 other. The former cut trees of a proper age and growth for being cut, and the other brought an action on the case in the nature of waste against him,